

STAND. COM. REP. NO. **322** -12

Honolulu, Hawaii

Feb 14 , 2012

RE: H.B. No. 1928

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Sixth State Legislature
Regular Session of 2012
State of Hawaii

Sir:

Your Committee on Transportation, to which was referred H.B. No. 1928 entitled:

"A BILL FOR AN ACT RELATING TO TESTING FOR INTOXICANTS,"

begs leave to report as follows:

The purpose of this measure is to decriminalize the refusal to submit to a breath, blood, or urine test by persons suspected of operating a vehicle under the influence of an intoxicant.

The Department of the Prosecuting Attorney of the County of Maui testified in support of this measure. Mothers Against Drunk Driving HAWAII and a concerned individual testified in opposition to this measure.

The criminalization of the refusal to submit to a breath, blood, or urine test for the use of intoxicants when an individual was suspected of operating a vehicle under the influence of an intoxicant was enacted in an attempt to encourage compliance with the request for the test. Prior to the criminalization of the refusal to submit to such a test, the law was clear that police were not required to inform an arrestee of their constitutional right to remain silent or their right to counsel for this refusal since there was no criminal penalty for refusing to submit to a such a test.

HB1928 HSCR TRN HMS 2012-1914

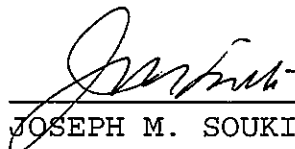


However, your Committee has been informed that the criminalization of the refusal to submit to a breath, blood, or urine test is causing serious problems with the prosecution of individuals arrested for operating a vehicle under the influence of an intoxicant. The possibility of criminal sanctions raises concerns regarding an individual's right to remain silent and to obtain counsel under the fifth and sixth amendment of the United States Constitution and several cases have already been dismissed because of this purported violation of constitutional rights. This may result in a tedious arrest and testing process, which risks evidence being lost as law enforcement waits for counsel to arrive.

While your Committee understands that there are questions and concerns raised by this measure and the effect it may have on other statutory provisions regarding the operation of a vehicle under the influence of an intoxicant, particularly Hawaii's ignition interlock program, this measure deserves further consideration.

As affirmed by the record of votes of the members of your Committee on Transportation that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1928 and recommends that it pass Second Reading and be referred to the Committee on Judiciary.

Respectfully submitted on
behalf of the members of the
Committee on Transportation,



JOSEPH M. SOUKI, Chair



State of Hawaii
House of Representatives
The Twenty-sixth Legislature

HSCR 322-12

Record of Votes of the Committee on Transportation

Bill/Resolution No.: HB 1928	Committee Referral: TRN, JUD	Date: 2/8/12		
<input type="checkbox"/> The committee is reconsidering its previous decision on the measure.				
The recommendation is to: <input checked="" type="checkbox"/> Pass, unamended (as is) <input type="checkbox"/> Pass, with amendments (HD) <input type="checkbox"/> Hold <input type="checkbox"/> Pass short form bill with HD to recommit for future public hearing (recommit)				
TRN Members	Ayes	Ayes (WR)	Nays	Excused
1. SOUKI, Joseph M. (C)	/			
2. ICHIYAMA, Linda (VC)	/			
3. AQUINO, Henry J.C.	/			
4. CULLEN, Ty	/			
5. LEE, Marilyn B.				/
6. LUKE, Sylvia	/			
7. OKAMURA, Tom				
8. SAIKI, Scott K.	/			
9. TAKUMI, Roy M.	/			
10. YAMASHITA, Kyle T.	/			
11. FONTAINE, George R.	/			
12. JOHANSON, Aaron Ling	/			
TOTAL (12)	10			1
The recommendation is: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted If joint referral, _____ did not support recommendation. <div style="text-align: center; font-size: 0.8em;">committee acronym(s)</div>				
Vice Chair's or designee's signature: <u>Linda Ichiyama</u>				
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